

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/667,029

Applicant(s)

ALFERNES ET AL.

Examiner

TANH Q. NGUYEN

Art Unit

2182

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/TANH Q. NGUYEN/
Primary Examiner, Art Unit 2182

Continuation of 11, does NOT place the application in condition for allowance because: applicant's argument are not persuasive.

Applicant argues that the rejection ignores the express claim language "a plurality of data types", that the cited passages of Olnowich (col. 1, lines 30-36 and FIG. 5) fail to disclose a plurality of data types, that to find otherwise would be to completely remove any meaning whatsoever from the express claim term "types", and that neither the function of a port (send/receive) nor the destination of its data (processor/network) equate to "a plurality of data types" - that is Olnowich has not been shown to disclose anything other than one type of data being transmitted using four different ports.

The arguments are not persuasive because there is no explicit definition of the term "data types" in applicant's specification. At page 4, lines 24-25 of the specification, applicant discloses the data types being ATM, Fast Ethernet, and/or Gigabit Ethernet - hence discloses the data types being ATM, the data types being Fast Ethernet, or the data types being Gigabit Ethernet (emphasis on "or"). In addition, at page 10, lines 20-21 of the specification, applicant discloses Fast Ethernet and Gigabit Ethernet data being types of Ethernet data - hence suggests the Fast Ethernet and Gigabit Ethernet data types being one type of data. Furthermore, at page 19, lines 23-26 of the specification, applicant discloses that less types of data may be used - hence suggests for example a plurality of ports with just Fast Ethernet data types. Still further, claims 9-10, 20-21 allow for the data types being only ATM data types, or for the data types being only Ethernet data types; and for the data types being only Fast Ethernet data types, or for the data types being only the Gigabit Ethernet data types. Applicant's disclosure, therefore, does not preclude one type of data being transmitted using different ports being considered as a plurality of data types.

In addition, with respect to the teachings of Olnowich, applicant only considers the citation at col. 1, lines 30-36 and FIG. 5 to make the argument and completely ignores the citations at col. 3, lines 51-66 and col. 3, line 62-col. 4, line 2. The ignored citations support the examiner considering data sent at a first rate being a first type of data, data sent at a second rate being a second type of data, data received at a third rate being a third type of data, and data received at a fourth rate being a fourth type of data. Note that the interpretation is consistent with applicant's disclosure (as discussed above) - hence the meaning of the claim term "types" being considered, and that there is nothing in the claims that preclude Olnowich from teaching a plurality of data types. Note further that the citations are provided only for the convenience of applicant as representative of the teachings of the reference, and that applicant needs to consider the reference in its entirety as potentially teaching all or part of the claimed invention.

The rejection therefore does not ignore the express claim language "a plurality of data types". Essentially, applicant has not claimed the invention narrowly enough to preclude Olnowich from teaching the invention.

TQN: January 15, 2009